avoca capital

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BY EMAIL

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Request for Comment on Proposed Rules and Form Amendments Under the Investment Advisers Act; File Numbers S7-36-10 and S7-37-10

Dear Ms. Murphy:

Avoca Capital Holdings ("Avoca") submits this letter in response to the request of the U.S. Securities and Exchange Commission (the "SEC" or "Commission") in Release No. IA-3110 for comments on proposed rule 203(m)-1 and Release No. IA-3111 for comments on proposed rule 204-4 (collectively, the "Proposals") The Proposals are designed to implement certain aspects of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")

Avoca appreciates the opportunity to comment on the Proposals. Avoca is a leading European credit investment manager with its principal place of business in Dublin, Ireland. Avoca also has an office in London, England but does not have an office in the United States. Avoca manages investor capital through a number of different types of structured credit vehicles, including collateralized loan obligations ("CLOs"), private funds and separately managed client accounts. Avoca has over 200 clients, all institutions, and manages approximately $7.8 billion on behalf of those clients. Currently, Avoca manages 13 CLO funds (the "Funds"). Each of the Funds is organized and operated as a public limited liability company under the laws of Ireland or the Netherlands. Although notes that the Funds issue are offered primarily to European investors, U.S. persons own Fund notes as well, either through purchases directly from the issuer in private transactions or in transfers from initial purchasers in transactions exempt from registration by virtue of Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"). The Funds are not registered as investment companies under the Investment Company Act of 1940, as amended (the "Investment Company Act"), in reliance on Section 3(c)(7) of that Act.

Proposed rule 203(m)-1

Avoca would like to express its support of the approach that the Commission has taken with respect to the "assets under management" threshold in the proposed exemption in proposed rule 203(m)-1 (the "private fund adviser exemption"). Specifically, Avoca supports the position that the phrase "assets under management in the United States" should refer to assets managed from a U.S. place of business. It is reasonable to assume that U.S. investors who purchase shares of a private fund (as defined in section 202(a)(29)) will not expect an investment adviser that has no United States presence to be registered with the U.S. SEC as an investment adviser. Furthermore, it would be a hardship (in our opinion, an unnecessary one) for firms such as Avoca, with no U.S. office from which it conducts either asset management or marketing activities, to have to register as an investment adviser in the United States and comply with the substantive requirements of the U.S. Investment Advisers Act of 1940, as amended (the "Advisers Act"). Avoca does not actively market the Funds (or any of its other products) in or from the United States or to U.S.

persons. The entirety of its business is conducted outside the United States and the overwhelming majority of it clients and Fund investors are outside the United States. The chances are negligible that activity conducted by Avoca and other firms similarly situated would have an impact on the U.S. markets.

As the Commission is aware, the approach to determining "assets under management" under section 202(a)(30) for foreign advisers seeking to rely on the exemption in section 203(b)(3) (the "foreign private adviser exemption") is different than that proposed for the private fund adviser exemption. To be able to rely on the foreign private advisers exemption, an adviser must count U.S. clients and investors in funds that it manages and calculate the assets under management attributable to those clients and/or investors. Because of this approach to calculating assets under management, Avoca cannot meet the requirements of this exemption even though it does not have a single U.S. client as that term is defined in the Advisers Act (i.e., it has more than 15 investors in the Funds). If the Commission were to adopt the same approach with respect to the private fund adviser exemption, Avoca would be required to register as an investment adviser in the United States despite not having a single U.S. person as a client.

Many of the substantive requirements of the Advisers Act would be difficult, impossible, or of no practical benefit to apply to a firm such Avoca with no U.S. place of business, no Funds organized under the laws of the United States, and no U.S. clients. The SEC staff acknowledged this in its letter to the American Bar Association and confirmed that the substantive provisions of the Advisers Act generally would not apply in that context.[1] Furthermore, even requiring Avoca to develop and file a Form ADV Part II seems unnecessary in light of the disclosures investors receive in the Funds' offering documents. This "square peg in a round hole" result would add costs to the market without increasing investor or market protection. Accordingly, Avoca supports the Commission's proposed approach to the assets under management test in the private fund adviser exemption and would strongly oppose a shift to an approach that looked to U.S. investors when making the calculation.

Proposed rule 204-4

We oppose the Commission's proposed rule 204-4. Requiring investment advisers relying on the mid sized private fund adviser exemption or the exemption in proposed rule 203(l) for venture capital fund advisers (collectively, "exempt reporting advisers") to provide detailed information about themselves, their ownership, their business activities and their disciplinary history, which information is to be publicly available through the SEC's website, goes beyond the intention of the Dodd-Frank Act and creates an undue burden on those advisers. The Commission's stated purpose in collecting this information and making it publicly available is to "assist [the SEC] to identify the advisers, their owners, and their business models. The items that [the SEC has] proposed would also provide [it] with information as to whether these advisers or their activities might present sufficient concerns as to warrant our further attention in order to protect their clients, investors, and other market participants. [The SEC has] also considered the broader public interest in making this information generally available and believe there may be benefits of providing information about their activities to the public."[2]

We do not believe that the Commission needs this information nor do we understand what, if the Commission were to find information it believed "warrant[ed its] further attention," the Commission could or would do about it. Although we acknowledge that, even as an exempt reporting adviser, Avoca is subject to the general anti-fraud provisions of the U.S. securities laws, including the Advisers Act, we do not believe that the SEC has explained how it intends to use the information to that or other appropriate ends. Exempting advisers on the basis that their registration is not necessary for the protection of investors while at the same time requiring the public filing of detailed information about those advisers would seem to be inconsistent if not opposite positions. We do not believe that the SEC has met its burden of justifying the obvious cost to advisers by merely making vague and conclusory statements such as "details regarding other business activities that the adviser and its affiliates are engaged in...would permit [the SEC] to identify conflicts that the adviser may have with its clients that may suggest significant risks to those clients."[3] Furthermore, the SEC's position that it is appropriate to require exempt reporting advisers to file parts of Form ADV

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[1] Letter to Paul N. Roth and Jeffery E. Tabak, American Bar Association Subcommittee on Private Investment Entities, from Robert E. Plaze, Associate Director, SEC Division of Investment Management, Question A (August 10,2006).

[2] Release No. IA-3111, p. 41.

[3] Id, at 42.

Part 1A to "avoid the expense and delay of developing a new form"[4] contributes to the impression that the SEC is more concerned about speed and reducing the effort it must expend than limiting the filing requirements for exempt reporting advisers to only that information that is necessary or appropriate in the public interest or for the protection of investors. Therefore, we respectfully request the Commission to reconsider its position regarding the information it will require exempt reporting advisers to provide. Avoca believes that the already substantial obligation to provide detailed and comprehensive data regarding the Funds will be more than sufficient to address the SEC's legitimate concerns regarding US investors in the Funds. Accordingly, we oppose the adoption of rule 204-4 as currently proposed.

Avoca appreciates the opportunity to comment on the Proposals. If you have any questions, please contact the undersigned at the telephone number provided below.

Sincerely,

Michael Gilleran

Chief Financial Officer

[4] Id, at 38.